

II. EXHIBITS

Joint Exhibit 1 - Third Step Grievance Decision, dated March 13, 1986

Joint Exhibit 2 - Iowa Department of Transportation Policies and Procedures Manual, Policy No. 210.04

Joint Exhibit 3 - Memorandum, from Eileen Primmer to Ivalyn Faris, dated November 20, 1985, informing Faris that she was not selected for the clerk IV position.

III. ISSUE

The parties agree that the issue in this case is the following:

Did the Iowa Department of Transportation abuse its discretion in filling the Clerk IV position at the Younkers drivers license station.

IV. RELEVANT DEPARTMENT PERSONNEL POLICIES AND PROCEDURES

* * *

II. Policy Statement and Purpose:

It is the policy of the Department to select the best qualified candidate for each vacancy by using rules established by the Merit Employment Department. When a sufficient number of eligibles is not available or when those eligibles available are justifiably unsatisfactory, special recruitment efforts shall be taken by the Human Resources Bureau to provide suitable candidates for selection. Special efforts shall be made to accommodate employment opportunities for members of the protected classes.

* * *

VI. Procedures

J. Rejection Notification:

If a certificate was processed for the selection, the Human Resources Bureau shall be responsible for all rejection or non-selection notices.

V. FACTS

A. The parties stipulate the following:

- (1) The Department of Transportation [hereinafter DOT], complied with DOT and Merit System procedures in selecting a person to fill the vacant clerk IV position.
- (2) There is no allegation in this case regarding discrimination as to a protected class.

B. Based upon their joint exhibits, the parties agree on the following facts:

- (1) In response to the DOT's request for a promotional certificate list for a clerk IV vacancy at the Younkers drivers license station, the Merit Employment Department issued a list of 31 certified applicants.
- (2) Twenty-six applicants declined an interview, or otherwise indicated a lack of interest in the job.
- (3) The remaining five applicants were interviewed, including Faris and the selected applicant. Steven Tudor, Faris' immediate supervisor, conducted the interviews.
- (4) Ivalyn Faris is employed as a clerk-typist III, and the clerk IV position would have constituted a promotion.

C. In addition to the parties' joint exhibits, the testimony at hearing reveals the following:

- (1) Ivalyn Faris has been employed at the DOT Younkers station for the past nine years, and on at least two occasions she has temporarily served as a clerk IV. These temporary assignments were for approximately three to four months.
- (2) In her last job evaluation Steven Tudor noted that Faris was capable of performing the clerk IV job on a temporary basis.
- (3) Steven Tudor's job interview of the five applicants included Tudor's explanation of the clerk IV job duties and responsibilities, and a review of each applicant's job history and experience. During the interviews Tudor assessed each applicant's ability to work with the public.

- (4) Tudor considers the clerk IV position as requiring administrative skills, ability to deal with the public and good job references as important considerations. Tudor contacted each applicant's job references for recommendations.
- (5) Tudor's consideration of Faris' application was primarily based upon his approximately two year personal observation of Faris' work performance, and his review of previous job evaluations made by Faris' former supervisors.
- (6) Tudor did not consider Faris' seniority as a determinative factor in filling the clerk IV position, although Faris had more seniority than the selected candidate.

VI. CONCLUSIONS OF LAW

The parties agree that the issue in this case is whether the Department of Transportation abused its discretion in filling the vacant clerk IV position at the Younkers drivers license station.

Section 19A.14(2), 1985 CODE OF IOWA, as amended,^{1/} provides that review of a department's non-disciplinary personnel action

...shall be based upon a standard of substantial compliance with this chapter and the rules of the department of personnel. (emphasis added).

The Department of Transportation contends that it complied with all relevant DOT and Merit System personnel policies and procedures in selecting the best qualified candidate to fill the vacant clerk IV position.

Ivalyn Faris contends that she is the best qualified candidate because of her nine years seniority with DOT, and the fact that she has successfully served as a clerk IV on a temporary basis. Faris also alleges that Steven Tudor provided

^{1/} Senate File 2175, 71st General Assembly, 1986 Regular Session.

inadequate reasons for denying her application; that Faris was never considered as a serious candidate for the position; and that Faris was denied the position because she filed a grievance against Tudor in 1984.

Section 19A.14(2) requires the Department of Transportation to substantially comply with the Merit System and Department of Personnel rules when filling a job vacancy. The Merit System statute (Chapter 19A), and Department of Personnel rules do not establish specific procedures or employment criteria to be used when filling a vacancy. Absent such hiring restrictions, DOT has the unqualified right and discretion to determine both the method of interview and the criteria to be used during the hiring process. Therefore the substantial compliance standard does not encompass a review of a department's judgment as to either the type of interview utilized or which job applicant is best qualified.

It is my opinion however that the statutory substantial compliance test does encompass a review of whether a department utilizes the same hiring criteria and interview process with all job applicants. A department cannot merely go through the procedural motions in hiring an employee, rather all qualified applicants must be subject to the same hiring process and other pre-employment considerations in order to select the best qualified applicant.

Applying this principle to this case, the record does not support a conclusion that Faris was treated differently than the other job applicants, or that Faris was denied a promotion because she filed a grievance against Tudor.

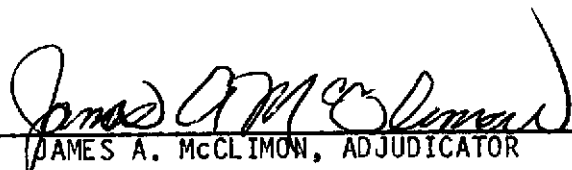
Ivalyn Faris was included on the Merit promotional certificate list which clearly indicates that Faris was qualified to fill the clerk IV vacancy. The record is also clear that Steven Tudor considered administrative skills, work history, job references and Tudor's perception of each candidate's ability to work with the public as important hiring criteria for the clerk IV vacancy.

Tudor utilized these criteria in considering each of the five candidates who were interviewed, including Faris.

Job seniority usually provides security to employees with the longest length of service to an employer, and seniority may also be a relevant factor in promoting an employee to a better job. In this case Ivalyn Faris not only had more seniority than the person selected to fill the clerk IV vacancy, but Faris also served as clerk IV for three to four month assignments. Nonetheless, Tudor was not restricted by seniority considerations alone, and it is reasonable to conclude from the record that Faris' job evaluations indicating that Faris is capable of serving as clerk IV on a temporary basis does not mean, in Tudor's opinion, that Ivalyn Faris is qualified as a permanent clerk IV replacement. Absent evidence that Faris was subjected to different hiring criteria and interview process, I cannot question Tudor's judgment.

Accordingly, the record demonstrates that DOT's clerk IV pre-employment criteria and interview process are in substantial compliance with the Merit System statute and Department of Personnel rules as required by Section 19A.14(2). For these reasons, I conclude that the Department of Transportation did not abuse its discretion in filling the clerk IV position at the Younkers drivers license station. The grievance is denied.

DATED at Des Moines, Iowa this 15th day of September, 1986.


JAMES A. McCLIMON, ADJUDICATOR